

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2023030998

CENTRAL UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

DECISION

June 22, 2023

On March 28, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Central Unified School District, naming Parent on behalf of Student. On April 6, 2023, OAH granted Central's motion to amend the complaint. Administrative Law Judge Cararea Lucier heard this matter by videoconference on May 2, 3, and 4, 2023.

Dee Anna Hassanpour and Anisha Asher, attorneys at law, represented Central Unified School District, assisted by Lucy Nadzharyan, law clerk. Julie Shafer, Director of

Special Education and Support Services, attended all hearing days on Central's behalf. Parent represented Student at the hearing. Parent attended the hearing on May 2 and 3, 2023.

OAH continued the matter to June 5, 2023, for written closing briefs. The record was closed, and the matter submitted on June 5, 2023.

ISSUE

May Central implement Student's annual individualized education program, called IEP, dated February 16, 2023, and March 15, 2023, without Parent's consent?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, commonly referred to as the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education, referred to as FAPE, that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) and (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Central had the burden of proof in this matter. (*J.G. v. Department of Education* (9th Cir. 2019) 772 Fed.Appx. 567.) The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was a 16-year-old girl who qualified for special education and related services under the eligibility categories of traumatic brain injury and visual impairment. At all relevant times, Central Unified School District was responsible for offering Student a FAPE.

ISSUE: MAY CENTRAL IMPLEMENT STUDENT'S ANNUAL IEP DATED FEBRUARY 16, 2023, AND MARCH 15, 2023, WITHOUT PARENT'S CONSENT?

Central contends it offered Student a FAPE in the February 16, 2023, and March 15, 2023, annual IEP. The February 16, 2023, and March 15, 2023, annual IEP document will be referred to as the February 16, 2023, annual IEP. Specifically, Central

contends that in-person instruction in a functional life skills special day classroom, on a comprehensive public high school campus, was the appropriate placement for Student in the least restrictive environment.

Student contends Central's February 16, 2023 annual IEP was not appropriate for Student. Student argues that Student should be placed in Home Hospital Instruction due to her risk of severe illness and complications if she contracts the novel coronavirus called COVID-19. Student contends Student's health is paramount and should be the decisive factor in determining the location of Student's educational program and services.

The IDEA requires school districts to offer eligible students a FAPE in the least restrictive environment. When a school district seeks to demonstrate that it offered a FAPE, the legal tribunal applies a two-part analysis. First, the school district must prove it complied with the procedures set forth in the IDEA. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 206-207.) Second, the school district must prove the IEP was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (Ibid; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988].) Central bears the burden of proof that Student's February 16, 2023, annual IEP met the procedural and substantive standards under the IDEA.

Student suffered from a tragic accident when she was three years old that left her severely and permanently disabled. On December 19, 2009, the family was busy preparing for a Christmas program at church. Student climbed up a tall dresser in her brother's room causing a heavy, 32-inch television to fall on her. The accident inflicted

immediate trauma, including multiple facial, orbital and skull fractures, and intraventricular and frontal hemorrhaging, leading to a left hemispheric stroke. It also left her with permanent damage to her body and brain.

As a result of the accident, Student had significant multiple disabilities that impacted her life and education. Student was diagnosed with a traumatic brain injury and hemiparesis on her right side. The injury to her brain left Student with impaired cognitive abilities and communication deficits. The hemiparesis resulted in a marked weakness on her right-hand side, requiring orthotics on her right leg and a brace on her right arm and wrist. Student was visually impaired, blind in her left eye, but with functional vision in her right eye. Because she was orthopedically and visually impaired, she required assistance on uneven terrain, and navigating obstacles in her environment. She was at risk of falling and broke her arm several times. As a result of the injury to her brain, she also developed hypothyroidism, panhypopituitarism, precocious puberty, and diabetes insipidus. These conditions impacted her hormones, sodium, and energy levels. She suffered from asthma and insomnia. Student had a gastronomy tube, referred to as a g-tube, through which she received numerous daily medications.

Despite her disabilities, Student lived a full and joyful life surrounded by a warm and caring family. She lived with Parent and enjoyed spending time with her brother and her grandparents. She was outgoing, personable, and loved people. She worked hard and liked to celebrate when she did something right. She was enthusiastic about sushi and loved the avocado in California rolls. She enjoyed the television shows Sid the Science Kid and the Mickey Mouse Clubhouse.

Student never attended school in-person at Central. Prior to the COVID-19 health emergency school closures in March 2020, Student attended school in person within Fresno Unified School District on an interdistrict transfer.

On September 3, 2020, Parent provided Central with a letter from Dr. James Horspool, Student's pediatrician, stating that Student should not attend school in-person. Parent and Dr. Horspool discussed Parent's concerns about Student's health amidst the COVID-19 pandemic. Dr. Horspool agreed Student was especially vulnerable to severe illness from COVID-19. Asthma presented the biggest health risk factor for Student, but the constellation of her disabilities also made her vulnerable. At the beginning of the 2020-2021 school year, a vaccine for COVID-19 was not widely available. Dr. Horspool suggested Student take precautions recommended for the general public, such as using a face mask and avoiding large concentrations of people.

In the September 3, 2020 letter, Dr. Horspool cautioned Central that in-person learning was not safe for Student. He recommended Central meet her educational needs through distance learning or other methods. Additionally, he opined that Student should not be required to attend class for more than three hours per day, with a start time at 9:30 a.m., at the earliest. Dave Paliughi, Central's Director of Special Education and Student Support Services at that time, reviewed the letter. Central placed Student on Home Hospital Instruction for the 2020-2021 school year.

Home Hospital Instruction was a program available to all students, general or special education, who suffered from a temporary disability making school attendance impossible or inadvisable. A temporary disability did not include a disability that would

qualify a student for special education. (Ed. Code § 48206.3.) Central provided one hour per day of in-home instruction by a credentialed teacher for students placed on Home Hospital Instruction.

On August 3, 2021, Parent applied for Home Hospital Instruction for Student for the 2021-2022 school year. Dr. Horspool continued to recommend Home Hospital Instruction based upon his discussion with Parent and the concerns she raised. In his view, the recommendation was reasonable given Student's health risks and the level of uncertainty around COVID-19. With respect to COVID-19, the doctor usually accommodated parents' wishes if it made sense to him medically. He considered the risk-benefit ratio of in-person learning versus exposure to COVID-19. Dr. Horspool and Parent discussed Student's diagnoses and her risk of complications from COVID-19 and decided together that Student should remain at home rather than attend school in person.

At an IEP team meeting on August 10, 2021, Central agreed to place Student on Home Hospital Instruction for the 2021-2022 school year. The team discussed Student attending in-person instruction. Special Education Teacher Reiko Rushing explained that the proposed classroom for Student, a functional life skills special day class, used social distancing and had its own restrooms for the students in the class. Student enjoyed working with Ms. Rushing, who provided Student with in-home instruction during summer 2021. However, Parent continued to be concerned about Student attending in-person school because Student could not tolerate wearing a mask and was not vaccinated against COVID-19. Mr. Paliughi believed in working with families and

was attentive to Parent's concerns. Although the team hoped Student would return to in-person school, Central agreed to continue providing Student with Home Hospital Instruction.

On March 15, 2022, Parent and Ms. Rushing discussed the possibility of Student attending school in person. Ms. Rushing was excited for Student, who was very social and could make more progress in a classroom setting. Ms. Rushing assured Parent the class continued to social distance, ate lunch in the classroom away from the crowds of general education students, avoided hallways, and sanitized the classroom at the end of each day. Parent continued to have concerns about Student's exposure to COVID-19 on a school campus and kept her home.

On August 10, 2022, Parent applied for Home Hospital Instruction for Student for the 2022-2023 school year. Dr. Horspool's colleague signed the letter because he was on vacation. Dr. Horspool discussed the request with Parent and decided that Home Hospital Instruction continued to be a reasonable request given Student's relative risk of complications if she contracted the virus. Parent was anxious about Student returning to a school campus. Dr. Horspool agreed that in-person school was a relative risk that may not have been worth taking, from a medical perspective, given Student's health issues. He considered Home Hospital Instruction to be analogous to a seatbelt in a car; a reasonable safety measure.

Julie Shafer, Director of Special Education and Student Support Services for Central, wanted to convene an IEP team meeting to discuss Parent's August 10, 2022, request. As the parent of a medically fragile child herself, Ms. Shafer was especially sensitive to Student's health needs and Parent's anxieties. Ms. Shafer was also concerned that Home Hospital Instruction was not intended to be a long-term

placement, and that Student was entitled to an offer of a FAPE in the least restrictive environment. Additionally, the request did not meet legal and district procedural requirements because it did not have an end date. Ms. Shafer and her staff attempted to schedule an IEP team meeting, to no avail. Parent also told Central the family was relocating outside of the district.

On November 10, 2022, Ms. Shafer sent Parent a prior written notice letter proposing to provide Student in-person instruction on a comprehensive high school campus commencing November 28, 2022, after the Thanksgiving break. Ms. Shafer hoped to obtain Parent's input via an IEP team meeting, and to discuss annual goals and placement.

Parent sent several hostile replies to Ms. Shafer's letter. Her tone was insulting to Ms. Shafer and Central. Parent replied, "I have never heard your name so idk who you are As per my attorney I'm Still not signing IEP." Parent stated she would not send Student to a Central school campus, and that Central was "welcome to take [her] to court."

Parent continued to request Home Hospital Instruction. On December 19, 2022, Parent resubmitted the Home Hospital Instruction request of August 10, 2022, corrected to add an end date of June 8, 2023. Ms. Shafer was concerned about the length of the request because Home Hospital Instruction generally was temporary, averaging two months. Student had been on Home Hospital Instruction for two and a half years, receiving just one hour per day of educational services. Shafer continued trying to schedule an IEP team meeting to discuss Parent's request throughout the winter break.

On February 16, 2023, and March 15, 2023, during Student's 11th grade year, Central convened Student's annual IEP. The procedural and substantive appropriateness of the February 16, 2023, annual IEP is at issue in this due process matter.

On March 9, 2023, Student had surgery on her arm and wrist. On April 19 and 20, 2023, Parent submitted letters requesting Home Hospital Instruction until June 8, 2023, based upon Student's surgery and her continued risk of complications if she contracted COVID-19. On April 26, 2023, Student's IEP team met and agreed to place Student on Home Hospital Instruction until June 8, 2023. The team also altered Student's goals and services. The parties continue to dispute Student's educational program beginning June 9, 2023, as offered in the February 16, 2023, annual IEP.

NOTICE OF IEP TEAM MEETINGS AND PROCEDURAL SAFEGUARDS

To ensure parent participation in placement determinations, public agencies must provide parents with notice of meetings that will be held to decide placement. (34 C.F.R. § 300.501(b)(1).) The IEP team meeting must be scheduled at a mutually agreed upon time and place. (Ed. Code, § 56341.5(c).)

A school district must provide parents with a copy of their procedural safeguards. State and federal law require districts to provide the parent of a child eligible for special education with a copy of a notice of procedural safeguards upon initial referral, and thereafter at least once a year, as part of any assessment plan, and at other designated times. (20 U.S.C. § 1415(d)(1); 34 C.F.R. § 300.504(a); Ed. Code, § 56321, subd. (a).) The notice must include a full explanation of all procedural safeguards and be written in language understandable to the general public and provided in the native language of

the parent or other mode of communication used by the parent. (20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1), 300.504.) Furthermore, at each IEP team meeting, the district must inform a parent of state and federal procedural safeguards. (Ed. Code, § 56500.1, subd. (b).)

Central ensured that the February 16, 2023, and March 15, 2023, IEP team meetings were scheduled with proper notice to Parent. Ms. Shafer spent over four months trying to secure Parent's participation in the IEP process, over which time she offered numerous dates and times to accommodate Parent's schedule. On February 2, 2023, Ms. Shafer sent Parent an invitation to the February 16, 2023, IEP team meeting, with a copy of Parent's procedural safeguards attached in her native language of English. The invitation was written in language understandable to the general public.

At the February 16, 2023, IEP team meeting, the team did not finish Student's IEP document. The participants agreed to reconvene on February 21, 2023, a time and date selected by Parent. However, after the meeting, Parent emailed Ms. Shafer that she could not attend a meeting on February 21, 2023, because Student had a doctor's appointment. On March 9, 2023, Parent emailed Ms. Shafer that she could attend an IEP team meeting on March 15, 2023, at 10:00 a.m. On March 10, 2023, Ms. Shafer sent Parent an invitation to an IEP team meeting scheduled for March 15, 2023, at 10:00 a.m., with a copy of Parent's procedural safeguards attached in her native language of English. This invitation was also written in a language understandable to the general public. At 7:08 a.m., on March 15, 2023, Parent emailed Ms. Shafer that she could not attend the IEP team meeting. Central complied with all procedural requirements regarding the scheduling and notice of the March 15, 2023, IEP team meeting.

REQUIRED IEP TEAM PARTICIPANTS

A school district must ensure the IEP team includes all legally required participants. The IEP team must include:

- one or both of a student's parents;
- no less than one general education teacher if the student is, or may be, participating in the regular education environment;
- no less than one special education teacher or, if appropriate, a special education provider of the student;
- a representative of the district who is qualified to provide or supervise specially designed instruction, and is knowledgeable about the general education curriculum and the availability of district resources;
- an individual who can interpret the instructional implication of assessment results;
- at the discretion of the parents or district, any other individual who has knowledge or special expertise regarding the student, including related services personnel, as appropriate; and
- whenever appropriate, the student with exceptional needs. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

Central did not include all required IEP team members at the February 16, 2023, and March 15, 2023 IEP team meetings. Specifically, Central failed to include a general education teacher at these meetings. The team attempted to excuse the general education teacher from the meetings. A general education teacher is a mandatory member of an IEP team meeting if a student is, or may be, participating in general education. Here, the team considered and ultimately offered Student a placement that

included participation in general education. As such, a general education teacher was a mandatory member of Student's IEP team meetings whose area of the curriculum was being discussed by the team.

A mandatory member of an IEP team meeting whose area of the curriculum was being discussed may be excused from the meeting if the parent and the school district agreed to the excusal in writing and the team member submitted, in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting. (34 C.F.R. § 300.321(e)(2).) Here, the general education teacher did not provide input about the development of the IEP, in writing, to Parent prior to the IEP team meetings. The general education teacher was not lawfully excused. As such, Central did not meet its burden of proof that it complied with the procedural requirement to ensure the IEP team meetings of February 16, 2023, and March 15, 2023, included all legally required participants.

Harmless procedural errors do not constitute a denial of FAPE. (*L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2008) 556 F.3d. 900, 910.) Procedural violations of the IDEA are a violation of FAPE if they:

- Impede the child's right to FAPE;
- Significantly impede the parents' opportunity to participate in the decision-making process; or
- Cause a deprivation of educational benefit. (See *N.B. v. Hellgate Elem. Sch. Dist.* (9th Cir. 2008) 541 F.3d 1202; see also Ed. Code, 56505, subd. (f)(2).)

Central's failure to include a general education teacher at the IEP team meetings on February 16, 2023, and March 15, 2023, was not a harmless error. Instead, it impeded

Student's right to a FAPE during the general education portion of her school day. Central offered Student participation in general education for 46 percent of her school day, with two general education class periods in physical education and an elective.

Student had significant, pervasive disabilities. Appropriately including her in general education classes required thoughtful planning and input from a general education teacher. For example, the general education teacher could explain the classroom expectations at Justin Garza High School and how Student would be included socially and emotionally. The general education teacher could also explain how she would navigate the classroom, whether visual magnification would be provided in an elective class, and whether a general education teacher would know how to use the assistive technology Student required. Given that Central expected Student to attend two general education classes per day, Student was legally entitled to a thoughtful team discussion about her participation in the general education environment with meaningful input from a general education teacher.

Central's failure to include a general education teacher also significantly impeded Parent's opportunity to participate in the decision-making process about how Student would be accommodated and served in general education. Although the team discussed COVID-19 safety precautions in Ms. Rushing's special day class environment, no general education teacher provided information about COVID-19 mitigation practices available in the general education classes. Health and safety precautions were a critical concern for Parent, and the failure to have a general education teacher at the meeting to address Parent's concerns within the general education environment significantly impeded Parent's rights to participate in the IEP process and provide informed consent to Central's placement offer.

Accordingly, Central's failure to include a general education teacher at the February and March 2023 IEP team meetings denied Student a FAPE.

PARENT PARTICIPATION

The IDEA guarantees parents the right to participate in meetings with regard to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) The IDEA requires school districts to ensure the parents of disabled children are members of any group that makes decisions about their child's educational placement. (34 C.F.R. § 300.327; 34 C.F.R. § 300.501 subd. (c)(1) (2006).)

The IDEA places an affirmative duty on school districts to include parents in the IEP process. (*Doug C. v. State of Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038 (*Doug C.*)) If a parent cannot participate in an IEP team meeting in which a decision is to be made about the educational placement of their child, the public agency must use other methods to ensure the parent's participation, including allowing the parent to participate via telephone or videoconference. (34 C.F.R. § 300.322.) A school district may convene an IEP team meeting without a parent only if it cannot convince the Parent to attend, and in those limited circumstances it must keep a detailed record of its' attempt to include the parent. (*Ibid.*) A school district is not excused from including a parent in the IEP process even when it has been frustrating to schedule an IEP team meeting or difficult to work with a parent. (*Doug C., supra*, 720 F.3d 1038.)

Parent attended and participated in the February 16, 2023, IEP team meeting. Parent did not attend the IEP team meeting on March 15, 2023. The afternoon prior to the meeting, on March 14, 2023, Parent emailed Ms. Shafer explaining that she might need to reschedule the IEP team meeting to later in the day:

"I'm letting you know in advance last night she was up and down all night if this happens again it may need to be afternoon im not trying to put off anything else but I can't do a meeting with no sleep."

Several hours prior to the meeting on March 15, 2023, Parent emailed Ms. Shafer again, explaining she could not attend because Student's g-tube was bleeding. Ms. Shafer responded that the IEP team was unable to postpone the meeting, noting that many of the service providers attending the meeting had canceled sessions with other students to attend the meeting, which had been scheduled at a date and time originally proposed by Parent.

Central denied Student a FAPE by convening the IEP team meeting without Parent on March 15, 2023, because it denied Parent the ability to participate in the IEP team decision about Student's placement. Central had spent many months trying to convene Student's IEP. As challenging as the circumstances were for Central, a school district may not prioritize the schedules of its staff as a reason to convene an IEP team meeting without a parent. (*Doug C., supra*, 720 F.3d 1038.) As such, Central violated the IDEA by convening the March 15, 2023, IEP team without Parent.

THE IEP PROCESS AND DOCUMENT

Students eligible for IEPs are entitled to special education and related services to address the child's unique needs resulting from the disability. (34 C.F.R. § 300.39 (b)(3).) The IDEA requires States to provide a FAPE to all eligible students. (*Endrew F. v. Douglas County School Dist.* RE-1 (2017) 580 U.S. 386 [137 S.Ct. 988, 993].) States are required to provide instruction calculated to "confer some educational benefit" by offering an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Id.* at 998.)

The "educational benefit" to be provided to a student requiring special education is not limited to addressing the student's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

A focus on the particular child is at the core of the IDEA. (*Endrew F. v. Douglas County School Dist.*, *supra*, 137 S.Ct. 988, 992.) The IEP team addresses a student's unique needs by

- assessing the child in all areas of suspected disability,
- documenting the needs in the present levels of performance sections of the IEP, and
- offering the child appropriate goals, services, accommodations, and special factors to meet the child's needs.

“In determining what it means to ‘meet the unique needs’ of a child with a disability, the provisions governing the IEP development process are a natural source of guidance: It is through the IEP that ‘[t]he free appropriate public education required by the Act is tailored to the unique needs of’ a particular child.” (*Id.* at 1000.)

A school district must ensure that an IEP document contains all components required by the IDEA and California special education law. The IDEA does not require the IEP document to be in any particular format as long as all the contents requirements are included. (34 C.F.R. § 300.320.)

PRESENT LEVELS OF PERFORMANCE

An IEP must include a student’s present levels of performance. The present levels of academic achievement and functional performance must include how the child’s disability affects the child’s involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).)

In developing the IEP, the IEP team must consider the

- strengths of the child;
- the concerns of the parents for enhancing their child’s education;
- information about the child provided by or to the parents;
- the results of the most recent assessments;
- the academic, developmental, and functional needs of the child; and

- any lack of expected progress toward the annual goals. (20 U.S.C. § 1414(d)(3)(A), (d)(4)(A)(ii); 34 C.F.R. § 300.324(a), (b)(1)(ii); Ed. Code, § 56341.1, subds. (a), (d).)

Central did not include accurate, current, present levels of performance in the February 16, 2023, and March 15, 2023, IEPs. When the IEP team met on February 16, 2023, and March 15, 2023, the team barely knew Student. Although she was in 11th grade, Student had never attended Central schools in person. The evidence suggests that Central had not conducted a comprehensive assessment of Student after she returned to the district during the 2019-2020 school year. Additionally, Parent allowed Central very limited access to Student. This lack of knowledge impeded Central from including current and accurate present levels of performance in the IEP at issue.

Tyler Monis, Program Supervisor for Central, attended the IEP team meetings on February 16, 2023, and March 15, 2023. He recalled that the IEP team was concerned about their ability to include accurate and current present levels of performance in Student's IEP. The service providers had difficulty accessing Student and only saw her inconsistently, if at all. In his opinion, the present levels were not as accurate as the team would have liked.

Student had communication difficulties. Historically, Student had significant deficits in expressive and receptive language that impacted her in the educational setting. She also had deficits in intelligibility. Amy Prince, Speech and Language Pathologist from the Talk Team, attended the IEP team meetings. The Talk Team was a non-public agency providing speech and language services to Student pursuant to her IEP. However, Student had not attended any speech sessions during the 2022-2023 school year. Prior to the IEP team meeting, Ms. Prince advised Central that she could

not develop speech goals or recommend services for Student at the IEP team meetings because the Talk Team had not seen Student in eight months. At the due process hearing, Ms. Prince was knowledgeable about her field, candid, and highly credible. The February 16, 2023 annual IEP did not have accurate present levels of performance for Student in the area of speech. Ms. Prince could not offer current and accurate information about Student's communication needs because her staff did not have recent direct interaction with her.

Student has significant impairments in fine and gross motor. Central did not include current and accurate information about Student's present levels of performance in these areas in the IEP at issue. Parent did not permit Central's Orthopedic Impairment Specialist to access Student because she believed the individual was disrespectful. In an email dated February 9, 2023, Parent told Ms. Shafer she would not attend the IEP if the district's designated Orthopedic Impairment Specialist attended. A substitute Orthopedic Impairment Specialist attended the IEP team meeting, but she was not familiar with Student. Because of Parent's limitations and Central's lack of recent assessment data on Student, the IEP team did not have current information about Student's gross and fine motor needs and did not include accurate and current present levels of performance in the February 16, 2023, annual IEP.

Student was visually impaired. Randi Wiebe, Visually Impaired Specialist, attended the IEP team meetings at issue and provided input regarding Student's present levels of performance relating to her visual impairment. However, Ms. Wiebe's information on a key component of Student's education was outdated. Student required closed captioning television, referred to as CCTV, to access her education and to work on her goals. The CCTV magnified materials and allowed Student to work on a typing goal, along with a large keyboard and specialized software. In June 2022, Parent insisted Central remove the

CCTV from their home because it was large, and the family was planning to move. As such, when the IEP team met in February and March 2023, Ms. Wiebe did not have current and accurate present levels relating to Student's visual impairment. She relied on historical data about Student's functioning with the CCTV in lieu of providing accurate and current information about Student's present levels of performance in the area of visual impairment.

Student had numerous longstanding health concerns relating to her disabilities. Amy Mason, School Nurse, provided information regarding Student's present levels of performance in the area of health. Student had been very healthy since March 2020, and had not even had a cold. She continued to take numerous medications via her g tube and required hourly eye drops. Student was blind in her left eye and planned to have surgery in the near future to permanently close her left eyelid. Student was a poor sleeper who woke up frequently in the middle of the night due to insomnia. She received private physical therapy and occupational therapy. This health information was provided by Parent, and there is no dispute as to its accuracy.

Reiko Rushing, Special Education Teacher, presented information regarding Student's

- strengths and preferences,
- progress on past goals,
- academic performance,
- social emotional functioning,
- adaptive and vocational skills, and
- post-secondary transition.

At the time of the February and March 2023, annual IEP team meetings, Ms. Rushing had not seen Student since June 2021. As such, she relied on information from Student's Home Hospital Instructor, Carol Visitacion. According to Ms. Visitacion, Student was a delightful young woman with a sunny disposition and a positive attitude. She loved her cat and movies involving the ocean and sharks. Student had significantly delayed academic skills. She could read 48 common words and add a question mark or period to the end of a sentence. In mathematics, she could add and subtract within 18 and state the name and value of coins. There is no dispute as to the accuracy of the present levels of performance provided by Ms. Rushing.

Ms. Shafer attended the February 16, 2023, and March 15, 2023, annual IEP team meetings. In her opinion, the team did its best in developing Student's present levels of performance given their limited access to Student.

Parent attended the IEP team meeting on February 16, 2023, and provided input as to her concerns and Student's present levels of performance. Parent described Student as occasionally sassy. She was worried about Student's communication abilities, particularly in case of an emergency. She continued to have concerns about Student's exposure to COVID-19 if she were to attend school on a campus.

Overall, Central failed to meet its burden of proof that it included current and accurate present levels of performance in Student's February 16, 2023 IEP. The IEP failed to include current and accurate information about Student's communication and gross and fine motor functioning, and only limited information about student's visual impairment needs.

Central argues it had limited information about Student because Parent only accessed speech services sporadically, refused direct services by the Orthopedic Impairment Specialist, and demanded that Central remove the CCTV from Student's home. School districts may not excuse their failure to satisfy the IDEA's procedural requirements by blaming the parents. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047; see also *Doug C. v. State of Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038: "An agency cannot blame a parent for its failure to ensure meaningful procedural compliance with the IDEA because the IDEA's protections are designed to benefit the student, not the parent.") Central staff made earnest and good faith attempts to develop present levels of performance based upon their limited knowledge of Student, but such efforts fell short of the legal requirements under the IDEA and California law.

Central's procedural violation of failing to include current and accurate present levels of performance was a denial of FAPE for Student because it impeded her right to a FAPE. The present levels of performance are foundational for the IEP document. When an IEP fails to identify a child's unique needs the team lacks the baseline data to develop annual goals, or may omit goal areas all together, as happened in this case. Here, the failure had a cascading effect of causing the team to omit goals in areas of needs and failing to offer appropriate services. (See Cal. Code regs., tit. 5, § 3040, subd. (b): the IEP must show a direct relationship between the present levels of performance, the goals, and the offered educational services.) An IEP that fails to include accurate and current present levels of performance therefore does not address the unique needs of the child, as required by *Endrew F.* As such, Central denied Student a FAPE.

ANNUAL GOALS

An IEP must include appropriate annual goals in all areas of need. The IEP must contain a statement of measurable annual goals designed to meet the student's needs that result from his disability to enable the student to be involved in and progress in the general curriculum and meet each of the child's other educational needs that result from his disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) The IEP team develops measurable annual goals that address the student's areas of need and which the student has a reasonable chance of attaining within a year. (Ed. Code, § 56344; *Letter to Butler* (Office of Special Education and Rehabilitative Services Mar. 25, 1988); U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg. 12,406, 12,471 (1999 regulations).) The purpose of goals is to assist the IEP team in determining whether the student is making progress in an area of need. As such, the IEP must also contain a statement of how the student's goals will be measured and when the parent will receive periodic reports on the student's progress towards his goals. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the offered educational services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

The February 16, 2023 annual IEP did not include appropriate annual goals in all areas of need. Prior to the IEP, in an email dated February 15, 2023, Speech Pathologist Prince told Ms. Shafer she could not develop speech goals for Student because of lack of access to Student. The team did not have accurate present levels of performance or baselines upon which to develop speech goals. Ms. Prince did not believe she could ethically propose goals for Student under the circumstances. The February 16, 2023,

IEP, did not include any goals in the area of speech and communication. Although, it was possible that a speech pathologist could help with the other goals in Student's IEP, Ms. Prince could not affirm the goals were appropriate for Student from a communications perspective.

Central failed to include appropriate annual goals related to fine and gross motor skills. Student had pervasive deficits in fine and gross motor due to her disabilities that impacted her education. For example, Student was diagnosed with hemiparesis on her right side. The IEP team excused her from physical education testing because she had limited ability to complete gross motor skills and activities that would require getting up and down from the ground, running, and using her arms and legs. Prior to 2021, Student required a staff member to be in close proximity to ensure her safety around obstructions and uneven terrain. She wore an ankle-foot orthosis, referred to as AFO, on her right ankle and a brace or cast on her right wrist and hand. She received private physical and occupational therapy two times per month. The IEP team agreed Student required adaptive equipment and materials for both fine and gross motor access at school.

Student's orthopedic impairment impacted her education. Parent told the district's Orthopedic Impairment Specialist that she did "not want or require any OI services" from the provider. However, this did not excuse Central from its obligations under the IDEA to offer Student annual goals in all areas of need, including gross and fine motor. Central failed to do so.

Overall, Central failed to meet its burden of proof that it offered Student appropriate annual IEP goals in all areas of need in the February 16, 2023 annual IEP. Central's failure to offer Student appropriate annual goals in all areas of need denied Student a FAPE.

PLACEMENT

An IEP must include a description of the placement, services, and accommodations offered to the student. An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- to advance appropriately toward attaining the annual goals;
- to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities;
- and to be educated and participate with other children with disabilities and nondisabled children. (34 C.F.R. § 300.320(a)(4).)

Specific educational placement means that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042.)

CONTINUUM OF PLACEMENT OPTIONS AND PREDETERMINATION

School districts, as part of a special education local plan area, must have available a continuum of program options to meet the instructional and service needs of special education students. (34 C.F.R. § 300.115(a); Ed. Code, § 56360.) This continuum of program options must include, but is not limited to:

- regular education;
 - resource specialist programs;
 - designated instruction and services;
 - special classes;
 - nonpublic, non-sectarian schools;
 - state special schools;
 - specially designed instruction in settings other than classrooms;
 - itinerant instruction in settings other than classrooms; and
 - instruction using telecommunication in the home, hospitals, or institutions.
- (34 C.F.R. § 300.115; Ed. Code, § 56361.)

In determining placement, a school district must consider a continuum of alternative placements. (34 C.F.R. § 300.115(b); Ed. Code, § 56342, subd. (b).) A school district is only required to consider those placements on the continuum that may be appropriate for a particular child. There is no requirement that the IEP team members discuss all options, so long as alternative options are available. (*L.S. v. Newark Unified School Dist.*, (N.D.Cal, May 22, 2006, No. C 05-03241 JSW) 2006 WL 1390661.)

School districts may not unilaterally predetermine a child's special education and related services prior to an IEP team meeting. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858., cert. denied, 546 U.S. 936 (U.S. 2005).) School administrators and staff must enter the IEP team meeting with an open mind and must meaningfully consider the parents' input. (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.)

Central did not predetermine Student's special education and related services prior to the February or March 2023 IEP team meetings. The team carefully considered a multitude of options and variations for Student's special education placement and services. The team discussed Parent's desired placement of Home Hospital Instruction and had a nuanced discussion about the pros and cons of in-home instruction versus in-person learning on a public-school campus. The IEP team discussed the continuum of placement options for Student and offered her an in-person placement on a comprehensive high school campus.

FORMAL, SPECIFIC, WRITTEN OFFER OF PLACEMENT

A school district must make a formal, written offer of placement and services in the IEP document. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.) Additionally, an IEP must include the projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications. (34 C.F.R. § 300.320(a)(7).) An IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. (34 C.F.R. § 300.320(a)(5).)

Central made two offers of placement and services in the February 16, 2023, annual IEP, one for a full-day program and the other for a half-day program. While well intentioned, this dual offer was not legally compliant.

The first offer of placement and services was for a full-day program at Justin Garza High School, a comprehensive high school campus within Central. The IEP team offered Student 200 minutes per day of specialized academic instruction, to be delivered within four 50-minute class periods in mathematics, English language arts, science, and social science. These academic classes would be within a self-contained functional life skills classroom for special education students. Student would participate in general education for two 50-minute class periods in an elective and physical education.

The IEP team also offered Student

- speech and language services for 80 minutes per month, divided into four 20-minute sessions,
- specialized vision services 60 minutes per month divided into two 30-minute sessions, and
- health and nursing services for 30 minutes per day to administer eye drops as needed.

The IEP team offered Student 70 minutes per month of community-based instruction, and 60 minutes per month of career awareness, with the minutes embedded within the specialized academic instruction minutes. This first offer was to commence on March 15, 2023, and end on March 15, 2024.

The second offer of placement and services was for a half-day program at Justin Garza High School from 9:00 AM to 12:00 PM. The team discussed that Student would

attend periods one and two, and then have a break to socialize with peers. Period three would be an elective or physical education, or a time when services providers would deliver related services. Student would leave before lunch. The second offer was for an indeterminate amount of time. The IEP stated the “team agreed to start with 9-12 as [Student’s] schedule to start and follow up to see how she is doing and increase time as she is adjusted and successful.”

The IEP team wanted Student to attend a full-school day. Central believed the full-day program offered Student a FAPE. However, the team was concerned about Student’s insomnia and the fact that she had not attended school in-person since March 2020. The half-day placement was intended to ease her back to a campus setting and would be faded at some undefined point in time. However, the half-day program would not include the 200 minutes per day of specialized academic instruction the team believed Student required to receive a FAPE.

Additionally, the dual offer of placement muddled Central’s explanation of the extent, if any, to which Student would not participate with nondisabled children in the regular class. If Student’s school day ended before lunch, she presumably would not participate in general education for 46 percent of her school day, as stated in the IEP document when the team contemplated a full school day.

For all students, the requirement for the school district to make a formal specific offer of placement should be enforced rigorously by the courts. (*Union v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.) Here, Central’s error in making two offers of placement in the IEP document particularly impacted Student and Parent’s rights because Parent did not attend the March 15, 2023, IEP team meeting, and would have relied on the IEP

document to understand the placement offer. As such, Central's failure to make a specific placement offer denied Student a FAPE by significantly impeding Parent's participation in the decision-making process.

APPROPRIATE PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

School districts are required to provide each special education student with an appropriate program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (a)(2); Ed. Code, §§ 56031, 56033.5.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56040.1, subd. (a).)

When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced:

- the educational benefits of full-time placement in a regular classroom;
- the non-academic benefits of full-time placement in a regular classroom;
- the effect the presence of the child with a disability has on the teacher and children in a regular classroom; and

- the cost of placing the child with a disability full-time in a regular classroom. (*Ms. S. v. Vashon Island School District* (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

Central offered Student two different placements in the February 16, 2023 annual IEP. The first placement offer, of a full school day program with 200 minutes per day of specialized academic instruction, was an appropriate placement for Student in the least restrictive environment.

Central offered Student placement at Justin Garza High School, a comprehensive public-school campus. Student would attend four core academic classes within Ms. Rushing's functional life skills special day class. Ms. Rushing's class focused on the five domains of functional academics, community-based instruction, domestic skills, vocational skills, and recreation and leisure. The classroom was an appropriate setting to implement Student's goals. The classroom had a washer, dryer, and full kitchen, to help students develop skills for independent living. The first offer also included two classroom periods per day of general education. Student could also participate in school activities such as Special Olympics and prom.

Student was a giggly, sweet young woman who enjoyed socializing with others. While she enjoyed talking about her cat and showing off her manicures, she also worked hard and took her academics seriously. Student was entitled to an educational program that addressed her educational needs while also giving her access to general education peers and friends. Central's first placement offer of a full-day program at Justin Garza High School was the least restrictive environment for Student.

Parent wanted Student to be placed on Home Hospital Instruction. She was adamant that she never wanted Student to return to in-person school in Central. All students may receive individual instruction in their home, a hospital or other health facility when a temporary disability makes attendance in a regular program impossible or inadvisable. (Ed. Code, § 48206.3.) Whether a special education student receives Home Hospital Instruction is a matter for an IEP team to decide. (Cal. Code Regs., tit. 5, § 3051.4.) While a doctor may make a recommendation and support an application, a medical doctor does not have authority to unilaterally determine a student's special education program. Home Hospital Instruction is generally a temporary placement and is not appropriate for a student whose needs can be met in a less restrictive environment.

Central correctly determined that Home Hospital Instruction was not the appropriate placement for Student in the least restrictive environment at the time of the February 16, 2023, and March 15, 2023, annual IEP team meetings. Student's disabilities that made her susceptible to complications from COVID-19 were not temporary. Student's health concerns were a longstanding issue that Central was required to consider and address appropriately within the IEP process. Additionally, the one hour per day of instruction included in Home Hospital Instruction was not sufficient to provide Student a FAPE. Home Hospital Instruction was not the least restrictive environment for Student, as it isolated her from her peers.

APPROPRIATE SERVICES, SUPPORTS, AND ACCOMMODATIONS

An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent

practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child

- to advance appropriately toward attaining the annual goals;
- to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- to be educated and participate with other children with disabilities and nondisabled children in the activities described in federal regulations.

(34 C.F.R. § 300.320(a)(4).)

Related services are supportive services that a disabled student requires to benefit from special education. (34 C.F.R. § 300.34.) Related services include developmental, corrective, and supportive services, including transportation. (*Ibid.*)

Central failed to offer Student appropriate services in all areas of need in the February 16, 2023 annual IEP. Specifically, Central failed to offer Student appropriate services to address her speech, language, and communication skills. Ms. Prince could not determine an appropriate amount of speech services for Student because she had limited knowledge of Student's communication needs. IEP goals drive services. (Cal. Code regs., tit. 5, § 3040, subd. (b).) Because Student did not have speech goals, Ms. Prince did not know what Student would be working on in the 80 minutes per month of speech services offered in the February 16, 2023 annual IEP.

Central also failed to meet its burden of proof that it offered Student appropriate related services to address her orthopedic impairment and her gross and fine motor

skills deficits. Given Student's disabilities, it is implausible that Student did not require direct services related to motor deficits and her orthopedic impairment. Although Parent limited Central's ability to access Student for orthopedic impairment services due to a personality conflict, Central still had the legal obligation to offer Student appropriate services. It failed to do so, thereby denying her a FAPE.

SPECIAL FACTORS AND TEST ACCOMMODATIONS

The IEP must include a consideration of special factors, including

- behavioral supports,
- language support for students with limited English proficiency,
- supports for visually impaired, blind, hearing impaired and deaf students,
- assistive technology devices and services. (34 C.F.R. § 300.324(a)(2).)

When a child's behaviors impede the child's learning or that of others, the IDEA requires that the IEP team consider the use of positive behavioral interventions and supports and other strategies to address that behavior. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).)

The February 16 2023, annual IEP included a legally sufficient description of the special factors considered and offered to Student. The team discussed potential special factors at the IEP team meeting. Student required assistive technology devices and services, and low incidence services and equipment to address her visual and orthopedic impairments. The IEP team determined that she did not require braille instruction. Student was not hard of hearing or an English language learner. Her behavior did not impede her learning. Central met the IDEA's procedural requirements with respect to special factors.

Each IEP must contain a statement of any individual appropriate accommodations that are necessary to measure the child's academic achievement and functional performance on statewide and districtwide assessments. (34 C.F.R. § 300.320.)

At the February 16, 2023, and March 15, 2023, annual IEP team meetings, the team considered Student's need for accommodations on statewide and districtwide assessments. The IEP included a statement that Student would not participate in state testing because she required the California Alternate Assessment due to her cognitive delays and orthopedic impairment. Additionally, she would not participate in the California Alternate Assessment because Parent excused her from the assessment. Student was out of the age range for the physical fitness test.

EMERGENCY CONDITIONS

IEPs must include a description of the means by which the IEP will be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the pupil either at the school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9).)

Central failed to include an emergency conditions provision describing the instruction and services Student would receive in the event of an emergency lasting more than 10 school days. The IEP team overlooked this procedural requirement when developing the IEP document of February 16, 2023. Central argues that this technical error is non-consequential because Parent would likely not have consented to the IEP even if the team had included an emergency conditions plan. Central's argument is not persuasive. First, Student's education during the COVID-19 health emergency was at the

forefront of Parent's concerns. Second, a school district is required to comply with all procedural requirements of the IDEA even if it believes the Parent will not ultimately consent to a placement offer. (See *G.G. v. Conejo Valley Unified School Dist.* (C.D. Cal. Nov. 2, 2022) No. CV 21-9135 DSF MARx, 2022 WL 17478600: Whether the District offered a FAPE is determined by looking at the actions of the school district. Whether the [parents] intended to accept the offer is irrelevant.) Without the emergency plan, Parent could not reasonably determine what placement Central was offering in the event of a COVID-19 surge, wildfire, earthquake, or any other emergency that could close schools for at least 10 days. Thus, Central denied Student a FAPE because by failing to include an emergency plan it impeded Parent's ability to participate in the decision-making process.

TRANSITION GOALS AND SERVICES

IEPs must include a statement of transition goals and services at the first IEP in effect when the child turns 16 years old. (34 C.F.R. § 300.320(b).) Transition services are a coordinated set of activities for a child with a disability that are:

1. designed to be within a results-oriented process, focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including
 - postsecondary education,
 - vocational education,
 - integrated employment (including supported employment),

- continuing and adult education,
 - adult services,
 - independent living, or community participation; and
2. based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:
- Instruction;
 - Related services;
 - Community experiences;
 - The development of employment and other post-school adult living objectives; and
 - If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. (34 C.F.R. § 300.43 (a).)

Central failed to comply with the procedural requirements in developing Student's transition goals and services. Student was 16 years old, triggering Central's legal obligation to offer her transition goals and services. The February 16, 2023, annual IEP document included a page labeled Individual Transition Plan. However, the IEP team did not interview Student for the transition planning process, use age-appropriate assessments to develop the Individual Transition Plan, or solicit her input during the IEP team meeting. The Individual Transition Plan attached to the IEP document included false statements attesting that it complied with the procedures for developing the transition goals and services.

Student's voice was absent from the post-secondary transition planning process, violating both the letter and intent of the law. Ms. Rushing was responsible for developing the Individual Transition Plan. She relied solely on an interview with

Parent. Parent told Ms. Rushing that Student would live with Parent until the end of time. Parent would transport Student when needed. Because Ms. Rushing and Parent did not know what Student wished to pursue in an adult program, they decided she would explore coloring and sort laundry. Goals included in the transition document were impermissibly vague, such as "Upon completion of school I will explore activities that are of interest and skills," and "Upon completion of school I will continue to live at home."

Central argues that Parent did not allow Ms. Rushing access to Student for the transition planning process. Parent told Ms. Rushing that Student had the mind of an eight-year-old child and could not comprehend interview questions for the transition process. However, as a credentialed special education teacher for moderate to severely impaired high school students, Ms. Rushing was trained and experienced in conducting such interviews. Ms. Rushing was a highly skilled teacher with a positive relationship with Student. At the due process hearing, Ms. Rushing conceded she could have appropriately involved Student in the post-secondary planning process if Student had been available.

Central had an affirmative duty to offer Student a FAPE. (*Doug C. v. State of Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038.) Central cannot throw up its hands and blame Parent for this procedural error when it did not demonstrate that it took any steps to comply with this important aspect of the IDEA. For example, Central did not show that it filed a request for due process to override any lack of consent from Parent with regard to an assessment for post-secondary planning. Central did not present any evidence that it attempted to persuade Parent to allow Student to participate in the transition goals and services. Central's omission of Student from the development of her post-secondary transition plan ran roughshod over Student's rights and dignity to

be involved in the planning for her own future. Central failed to meet its burden of proof that it included an accurate and procedurally correct statement of transition goals and services in Student's February 16, 2023, and March 15, 2023, IEP document, thereby denying her a FAPE.

In sum, the February 16, 2023, annual IEP was not legally compliant because it failed to include necessary components required by the IDEA and California special education law including:

- the participation of a general education teacher in the IEP team process;
- the participation of Parent at the March 15, 2023, IEP team meeting;
- current and accurate present levels of performance;
- appropriate, measurable annual goals in all areas of need;
- a clear formal, written offer of placement and services;
- appropriate related services in the areas of speech and fine and gross motor;
- an emergency conditions plan; and
- appropriate post-secondary goals and services.

Overall, the preponderance of the evidence demonstrates that Central failed to offer Student a FAPE in the February 16, 2023, annual IEP. Central successfully proved that it offered Student a substantively appropriate placement in the least restrictive environment when it offered Student a full-day, in-person, educational placement at Justin Garza High School. However, in numerous other aspects, the IEP was both procedurally and substantively deficient. As such, Central failed to meet its burden of proof that its IEP developed on February 16, 2023, and March 15, 2023, was legally appropriate such that Central could implement the IEP without Parent's consent.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Central may not implement Student's annual IEP, dated February 16, 2023, and March 15, 2023, without Parent's consent. Parent prevailed on the only legal issue in this matter.

ORDER

1. Central failed to offer Student a FAPE in the February 16, 2023, and March 15, 2023, annual IEP, and as such, may not implement the IEP without Parent's consent.
2. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearing